

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 11,178  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Vocational Rehabilitation Division of the Department of Aging and Disabilities (hereinafter referred to as "V.R." or "the Department") not to contribute more than \$3,000.00 toward the purchase of a handicapped-equipped van for the petitioner. This case arises from a similar proceeding more than two years ago (Fair Hearing No. 9636) in which the board directed V.R. to assess the petitioner's need and eligibility for a van based on the petitioner's goal of achieving economic self-sufficiency as a self-employed designer and consultant in barrier-free construction.<sup>1</sup>

## FINDINGS OF FACT

Following the board's decision in Fair Hearing No. 9636, V.R. undertook an assessment of the petitioner's "vocational rehabilitation potential" in the following three areas: The petitioner's functional abilities in light of his medical condition (multiple sclerosis), the petitioner's vocational potential (i.e. an assessment of the types of jobs the

petitioner can perform), and the economic viability of the petitioner's chosen vocational goal--a barrier-free design business.

V.R.'s functional assessment of the petitioner is not disputed to the extent that it was found that the petitioner needs a wheelchair for all his personal mobility. He can push the chair himself but needs help transferring to a car.

It is not disputed that if the petitioner were to commute to work he would need either a driver/personal assistant to help him in and out of a car that was otherwise equipped for the petitioner to drive or a handicapped-equipped van that the petitioner could access and drive himself from his wheelchair.

Similarly, V.R.'s vocational assessment of the petitioner is not crucial. V.R. concedes that the petitioner's experience in the construction trade qualifies him to design and supervise handicapped accessibility construction projects. The petitioner concedes that he has "transferable skills" that would qualify him for several other jobs, provided that any job allowed him some flexibility in terms of the number of hours the petitioner would be required to work consecutively.

The main dispute in this matter concerns V.R.'s conclusion that the petitioner's chosen vocational goal--barrier-free designing and consulting--is not viable in terms of providing the petitioner with a means of economic

self-sufficiency. In Fair Hearing No. 9636, the board remanded the case to the Department because the Department had assumed, contrary to the petitioner's assertions at the hearing, that the petitioner's vocational goal was part-time self-employment with the petitioner's continued reliance on Social Security disability benefits as his primary source of income. It was the Department's position in Fair Hearing No. 9636 that the purchase of a van for the petitioner was not a cost-effective means of achieving such a modest vocational goal. Following the board's directive, however, V.R. undertook to assess the cost effectiveness of a van for the petitioner in light of the economic feasibility of the petitioner's stated goal of full-time barrier-free design and consulting work.

To this end, a "Business Enterprise Specialist" employed by the Department met with the petitioner and concluded that he had the requisite skills and experience for this work. The main question in the specialist's mind, however, was whether there was a market sufficient to provide the petitioner with sustainable employment. The specialist suggested that V.R. support the petitioner for a three month "test period" to see how his business developed.

This "test period" was begun in August, 1990. During that period (and beyond, see infra) V.R. provided the petitioner with a driver/personal care attendant to meet the petitioner's transportation needs, mileage reimbursements, business cards, advertising, stationery, and postage. At

some point, V.R. also purchased a new light-weight wheelchair for the petitioner--one that would be easier to transfer in and out of a car. The Department states that these services cost about \$1,600.00

In October, 1990, the Department began its evaluation of the petitioner's progress. During that time the petitioner had made a total of about \$200.00 from his consulting work. V.R. suggested at that time that the petitioner consider other jobs in light of the apparent lack of profitability of his present endeavor. V.R.'s "vocational assessment" of the petitioner, referred to above, was actually completed in December, 1990. However, for several months thereafter V.R. continued to pay for the petitioner's driver/attendant. When, by April, 1991, the petitioner still had not demonstrated any significant growth in his business, V.R. decided to close his case. At that time V.R. repeated what has become its standing offer to the petitioner--\$3,000.00 towards the purchase of a van.

At the hearing (held on May 14, 1992) the petitioner testified that he had bid on jobs that for the calendar year 1990 had totaled \$15,000.00 For 1991, his bids totaled \$49,193.00 And, so far in 1992, the petitioner had bid on jobs totaling \$45,701.00. However, he had only gotten a handful of the jobs he had bid on, and he had not made more than a few hundred dollars on all his jobs combined. The petitioner testified that he expects a large increase in his business soon because of the recently-enacted federal

disability access and discrimination law, getting better known in the field, and an improving economy. He foresees a business in the range of \$25,000.00 to \$30,000.00 a year in net income.

In the meantime, the petitioner still has a driver/assistant available to him, but he must make advance arrangements each time he needs this service. The petitioner argued eloquently and convincingly that a van would give him increased day-to-day efficiency in both this work and his personal life. There seems to be no dispute in this matter that ideally a van would best serve the petitioner's overall transportation needs. However, V.R. maintains that in light of the now-time-tested tenuousness of the petitioner's chosen vocational goal, it simply cannot justify the purchase of a van as a cost-effective means of achieving that goal.

As was the case in Fair Hearing No. 9636, this matter is again complicated somewhat by the fact that the petitioner and the Department are not in accord as to exactly what is the petitioner's "vocational goal". The Department admitted that it has considered the petitioner's request for a van only in light of his stated goal in Fair Hearing No. 9636--i.e., pursuing a barrier-free design and consulting business on a full-time self-employed basis. At the hearing, and again in his written argument, however, the petitioner seemed to allege that his vocational goal is broader--e.g., he has applied for and plans on continuing to

apply for at least some salaried positions within his field of expertise.

At this time, however, considering only the vocational goal addressed in Fair Hearing no. 9636 (see infra), it is found that the evidence amply supports the Department's conclusion that self-employment as a barrier-free designer and consultant is not likely to provide the petitioner with financial independence within the foreseeable future. The petitioner does not allege that he has not had adequate means and opportunity over the past two years to pursue and perform the jobs available to him.<sup>2</sup> Despite the petitioner's optimism and determination, there is little, if any, reliable evidence that, even with a van, his business is likely to improve significantly to the point where he could begin to be financially independent without the disability benefits he now receives.

ORDER

The Department's decision is affirmed.

REASONS

Section 301.2 of the V.R. Services Manual sets forth the "general policy" on "transportation services" as follows:

Transportation services may be provided to enable individuals to participate in the application process, in the evaluation of rehabilitation potential, and to accomplish specific objectives of the IWRP; they must be supportive of other services and will be provided only when comparable services and benefits and client resources are not available or must be supplemented.

The least expensive method will always be chosen unless contraindicated by the disability or time constraints.

Section 301.3(4) of the regulations refers specifically to "vehicle purchase", and includes the following:

The Division will normally participate in the purchase of a vehicle only if:

- a. the client has severe handicaps, and
- b. it is clearly documented in the case record to be the most cost-effective alternative, including relocation, of completing the objective, and
- c. the client is job-ready. . .

As was the case in Fair Hearing No. 9636, the petitioner is correct in arguing that the above regulations do not require a "demonstration of self-sufficiency" before the Department can consider the purchase of a van. However, (despite the unfortunate inartfulness of some of V.R.'s explanations of its decision), it is clear that the Department's position is that based on recent history it is highly unlikely that the petitioner's business will ever be self-sustaining. While it may seem harsh to base the decision in this matter on such a subtle distinction, the petitioner has not demonstrated that there is any reliable basis other than recent past history upon which to assess the long-term viability of his chosen enterprise.

As noted by the board in Fair Hearing No. 9636, the Department's definition of "job-ready" appears to contemplate the ability to perform "competitive work". See 34 C.F.R. § 361.1(c)(2). In Fair Hearing No. 9636 (pp 5-6) the board noted:

If the petitioner's work was to be limited to a few jobs a year, with income insufficient to jeopardize the petitioner's eligibility for Social Security, the evidence does not establish that obtaining outside assistance (in the form of a personal aide) on an infrequent basis to enable the petitioner to visit job sights and meet with clients is not an adequate alternative to the purchase of a van. Nor is there any law or regulation that, to the hearing officer's knowledge, requires the Department to purchase a van for an individual in such circumstances. Thus, if the petitioner is to prevail in this matter, he must establish a "vocational rehabilitation potential" greater than that assumed by the Department up to this time.

As noted above, the Department has demonstrated an ample factual basis for its assessment of the petitioner's "vocational rehabilitation potential", or "job-readiness" as a barrier-free designer and consultant. Notwithstanding the petitioner's optimism and determination, it simply cannot be concluded that having a van will significantly enhance the petitioner's prospects for self-sufficiency in this endeavor. Though admittedly not ideal, utilizing a driver/personal assistant on an "as needed" basis has been shown to be an adequate, and certainly less-costly, "alternative" to the petitioner's present transportation needs.

Therefore, it must be concluded that the Department's decision is in accord with its regulations (supra). Insofar as it has not been shown that those regulations violate any state or federal law the board is thus bound to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

It should be emphasized, however, that this decision



considers only the vocational goal addressed in Fair Hearing No. 9636--achieving self-support through self-employment as a barrier-free designer and consultant. It is, thus, unnecessary to consider, as a general matter, whether the Department's policy of placing dollar limits on the purchase of vans for those individuals who do meet the criteria under § 301.3(4)(b) (supra) violates federal or state law or regulations. If, as he intimated at the hearing and in his written arguments, the petitioner stands ready and willing to seriously pursue vocational goals other than his present endeavor, V.R. admitted at hearing that it would be willing to reopen the petitioner's case on this basis. It is, thus, unnecessary to consider the validity of the Department's April 1991 "closure" of the petitioner's case. The petitioner, of course, retains the right to appeal any subsequent decisions by V.R. if and when his case is "reopened".<sup>3</sup>

#### FOOTNOTES

<sup>1</sup>Copies of memoranda submitted by the parties were furnished to members of the board.

<sup>2</sup>The petitioner did state that a van would have enabled him to pursue bids farther afield than he did having to rely on a driver/assistant. However, he did not convincingly explain why this would be so, and he did not allege any instance in which his having had to rely on a driver/assistant had actually impeded his ability to bid on or to perform any job.

<sup>3</sup>It is also possible that if the petitioner decides to pursue his present business further, circumstances (i.e., demonstrable prospects of an increase in business) may justify his reapplying to V.R. for a van under the criteria

of § 301.3(4)(b) (with all attendant appeal rights of any decision by V.R. based on an alleged change in circumstances).

# # #